

PART 1201—DEFINITIONS

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AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 11 FR 177A-922, Sept. 11, 1946, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

§ 1201.1 Carrier.

The term *carrier* includes any express company, sleeping car company, carrier by railroad, subject to the Interstate Commerce Act (24 Stat. 379, as amended; 49 U.S.C. 1 *et seq.*), and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier."

§ 1201.2 Exceptions.

(a) The term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power.

(b) The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to carrier where delivery is not beyond the tipple, and the operation of equipment or facilities therefor or any of such activities.

§ 1201.3 Determination as to electric lines.

The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or

upon complaint of any part interested to determine after hearing whether any line operated by electric power falls within the terms of this part.

§ 1201.4 Employee.

The term *employee* as used in this part includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

§ 1201.5 Exceptions.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

§ 1201.6 Representatives.

The term *representative* means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

PART 1202—RULES OF PROCEDURE

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AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 11 FR 177A-922, Sept. 11, 1946, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

§ 1202.1 Mediation.

The mediation services of the Board may be invoked by the parties, or either party, to a dispute between an employee or group of employees and a carrier concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference; also, concerning a dispute not referable to the National Railroad Adjustment Board or appropriate airline adjustment board, when not adjusted in conference between the parties, or where conferences are refused. The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

§ 1202.2 Interpretation of mediation agreements.

Under section 5, Second, of title I of the Railway Labor Act, in any case in which a controversy arises over the meaning or application of any agreement reached through mediation, either party to said agreement, or both, may apply to the National Mediation Board for an interpretation of the meaning or application of such agreement. Upon receipt of such request, the Board shall, after a hearing of both sides, give its interpretation within 30 days.

§ 1202.3 Representation disputes.

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance

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with the requirements of the Railway Labor Act, it is the duty of the Board, upon request of either party to the dispute, to investigate such dispute and certify to both parties, in writing, the name or names of individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and to certify the same to the carrier.

§ 1202.4 Secret ballot.

In conducting such investigation, the Board is authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier.

§ 1202.5 Rules to govern elections.

In the conduct of a representation election, the Board shall designate who may participate in the election, which may include a public hearing on craft or class, and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within 10 days designate the employees who may participate in the election.

§ 1202.6 Access to carrier records.

Under the Railway Labor Act the Board has access to and has power to make copies of the books and records of the carriers to obtain and utilize such information as may be necessary to fulfill its duties with respect to representatives of carrier employees.

§ 1202.7 Who may participate in elections.

As mentioned in §1202.3, when disputes arise between parties to a representation dispute, the National Mediation Board is authorized by the Act to determine who may participate in the selection of employees representatives.

§ 1202.8 Hearings on craft or class.

In the event the contesting parties or organizations are unable to agree on the employees eligible to participate in

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the selection of representatives, and either party makes application by letter for a formal hearing before the Board to determine the dispute, the Board may in its discretion hold a public hearing, at which all parties interested may present their contentions and argument, and at which the carrier concerned is usually invited to present factual information. At the conclusion of such hearings the Board customarily invites all interested parties to submit briefs supporting their views, and after considering the evidence and briefs, the Board makes a determination or finding, specifying the craft or class of employees eligible to participate in the designation of representatives.

§ 1202.9 Appointment of arbitrators.

Section 5, Third, (a) of the Railway Labor Act provides in the event mediation of a dispute is unsuccessful, the Board endeavors to induce the parties to submit their controversy to arbitration. If the parties so agree, and the arbitrators named by the parties are unable to agree upon the neutral arbitrator or arbitrators, as provided in section 7 of the Railway Labor Act, it becomes the duty of the Board to name such neutral arbitrators and fix the compensation for such service. In performing this duty, the Board is required to appoint only those whom it deems wholly disinterested in the controversy, and to be impartial and without bias as between the parties thereto.

§ 1202.10 Appointment of referees.

Section 3, Third, (e) title I of the act makes it the duty of the National Mediation Board to appoint and fix the compensation for service a neutral person known as a "referee" in any case where a division of the National Railroad Adjustment Board becomes deadlocked on an award, such referee to sit with the division and make an award. The National Mediation Board in appointing referees is bound by the same requirements that apply in the appointment of neutral arbitrators as outlined in § 1202.9

§ 1202.11 Emergency boards.

Under the terms of section 10 of the Railway Labor Act, if a dispute between a carrier and its employees is

not adjusted through mediation or the other procedures prescribed by the act, and should, in the judgment of the National Mediation Board, threaten to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Board shall notify the President, who may thereupon, in his discretion, create an emergency board to investigate and report to him respecting such dispute. An emergency board may be composed of such number of persons as the President designates, and persons so designated shall not be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of emergency board members is fixed by the President. An emergency board is created separately in each instance, and is required to investigate the facts as to the dispute and report thereon to the President within 30 days from the date of its creation.

§ 1202.12 National Air Transport Adjustment Board.

Under section 205, title II, of the Railway Labor Act, when in the judgment of the National Mediation Board it becomes necessary to establish a permanent national board of adjustment for the air carriers subject to the act to provide for the prompt and orderly settlement of disputes between the employees and the carriers growing out of grievances, or out of the application or interpretation of working agreements, the Board is empowered by its order made, published, and served, to direct the air carriers and labor organizations, national in scope, to select and designate four representatives to constitute a Board known as the National Air Transport Adjustment Board. Two members each shall be selected by the air carriers and the labor organizations of their employees. Up to the present time, it has not been considered necessary to establish the National Air Transport Adjustment Board.

§ 1202.13 Air carriers.

By the terms of title II of the Railway Labor Act, which was approved April 10, 1936, all of title I, except section 3, which relates to the National

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Railroad Adjustment Board, was extended to cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and to all employees or subordinate officials of such air carriers.

§ 1202.14 Labor members of Adjustment Board.

Section 3, First, (f) of title I of the Railway Labor Act relating to the settlement of disputes among labor organizations as to the qualification of any such organization to participate in the selection of labor members of the Adjustment Board, places certain duties upon the National Mediation Board. This section of the act is quoted below:

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the secretary shall notify the Mediation Board accordingly, and within 10 days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representatives, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within 30 days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2, hereof, and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

§ 1202.15 Length of briefs in NMB hearing proceedings.

(a) In the event briefs are authorized by the Board or the assigned Hearing Officer, principal briefs shall not exceed fifty (50) pages in length and reply briefs, if permitted, shall not exceed twenty-five (25) pages in length unless the participant desiring to submit a brief in excess of such limitation re-

quests a waiver of such limitation from the Board which is received within five (5) days of the date on which the briefs were ordered or, in the case of a reply brief, within five (5) days of receipt of the principal brief, and in such cases the Board may require the filing of a summary of argument, suitably paragraphed which should be a succinct, but accurate and clear, condensation of the argument actually made in the brief.

(b) The page limitations provided by this section (§1202.15) are exclusive of those pages containing the table of contents, tables of citations and any copies of administrative or court decisions which have been cited in the brief. All briefs shall be submitted on standard 8½×11 inch paper with double spaced type.

(c) Briefs not complying with this section (§1202.15) will be returned promptly to their initiators.

[44 FR 10601, Feb. 22, 1979]

PART 1203—APPLICATIONS FOR SERVICE

Sec.

1203.1 Mediation services.

1203.2 Investigation of representation disputes.

1203.3 Interpretation of mediation agreements.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

§ 1203.1 Mediation services.

Applications for the mediation services of the National Mediation Board under section 5, First, of the Railway Labor Act, may be made on printed forms N.M.B. 2, copies of which may be secured from the Board's Chief of Staff's Office or on the Internet at www.nmb.gov. Such applications and all correspondence connected therewith should be submitted in duplicate. The application should show the exact nature of the dispute, the number of employees involved, name of the carrier and name of the labor organization, date of agreement between the parties, if any, date and copy of notice served by the invoking party to the other and date of final conference between the parties. Application should be signed by the highest officer of the